

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

RECEIVED	
SEP - 8 2004	Case No.

United States District Court		District	MASSACHUSETTS
Name	DONALD K. DELISLE	Prisoner No.	W66073
Place of Confinement	Bridgewater State Hospital (BSH) 20 Administration Road Bridgewater, Massachusetts 02324 <i>04-11906 JLT</i> <i>Referred to MT L P Cohen</i>		
Name of Petitioner (include name under which convicted)	DONALD K. DELISLE	Name of Respondent (authorized person having custody of petitioner)	<i>RECEIPT # 5100</i> MICHAEL T. MALONEY, Commr., Dept. of CORRECTIONS, KENNETH NELSON, Supdt., BSH CLERK OF SUP. CT. 200 ISSUED <i>h6</i> CLERK CLK <i>9-13-04</i>
The Attorney General of the State of	Massachusetts		
Thomas F. Reilly, One Ashburton Pl., 20th Fl., Boston, MA 02108			

PETITION

- Name and location of court which entered the judgment of conviction under attack Suffolk Superior Court
Boston, Massachusetts, for relevant
revocation of probation (underlying judgment entered in Hampshire Superior
Court, Northampton, Massachusetts)
- Date of judgment of conviction February 18, 1999, for relevant probation revocation
- Length of sentence twelve-fifteen years
- Nature of offense involved (all counts) attempted extortion
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☐
 - (b) Judge only ☒ (probation revocation proceedings)
- Did you testify at the trial?
Yes ☒ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐ (order revoking probation)

AO 241 (Rev. 5/85)

9. If you did appeal, answer the following:

- (a) Name of court Supreme Judicial Court of Massachusetts
- (b) Result order revoking probation affirmed
- (c) Date of result and citation, if known Com. v. Delisle, 440 Mass. 137 (9/10/03)
- (d) Grounds raised Whether the 5th amend. privilege against self-incrimination precludes revocation of probation based on refusal to make disclosure regarding present and future charges in court-mandated therapy.
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Hampshire Superior Court
- (2) Nature of proceeding State habeas corpus petition (based on erroneous calculation of time served under prior sentences)
- (3) Grounds raised erroneous imposition of earlier sentence

AO 241 (Rev. 5/85)

However, the State habeas corpus petition has nothing to do with the merits of probation revocation raised in this petition.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result The Superior Court judge has taken the matter under advisement.

(6) Date of result No decision yet.

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

The decision has not been handed down.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may

AO 241 (Rev. 5/85)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: probation revocation obtained in violation of the 5th
amendment privilege against incrimination

Supporting FACTS (state *briefly* without citing cases or law) The petitioner's probation
was revoked in large part because he declined to make written dis-
closures concerning possible abuse of his wife during the course of
court-mandated therapy, when there were four pending criminal actions
against him instituted by his wife for assault and/or violations of
a restraining order.

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

AO 241 (Rev. 5/85)

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

AO 241 (Rev. 5/85)

- (c) At trial (i.e. probation revocation) John R. Campbell, Esq., 101 Tremont Street, Boston, Massachusetts 02108
- (d) At sentencing John R. Campbell, Esq., 101 Tremont Street, Boston, Massachusetts 02108
- (e) On appeal William W. Adams, Esq., 203 Summit Street, Plainfield, Massachusetts 01070-0038
- (f) Is any post-conviction proceeding William W. Adams, Esq., 203 Summit Street, Plainfield, Massachusetts 01070-0038
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
 Yes ☒ No ☐ (as to the underlying judgments of convictions)
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes ☐ No ☒
- (a) If so, give name and location of court which imposed sentence to be served in the future: _____
- (b) Give date and length of the above sentence: _____
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
 Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

9/13/04
 (date)


 Signature of Petitioner